

**13-23-1. Short title.**

This chapter is known as the "Health Spa Services Protection Act."

Enacted by Chapter 105, 1987 General Session

**13-23-2. Definitions.**

As used in this chapter:

- (1) "Consumer" means a purchaser of health spa services for valuable consideration.
- (2) "Division" means the Division of Consumer Protection.
- (3) (a) "Health spa" means any person, partnership, joint venture, corporation, association, or other entity that, for a charge or fee, provides as one of its primary purposes services or facilities that are purported to assist patrons to improve their physical condition or appearance through:
  - (i) aerobic conditioning;
  - (ii) strength training;
  - (iii) fitness training; or
  - (iv) other exercise.
- (b) "Health spa" includes any establishment designated:
  - (i) as a "health spa";
  - (ii) as a "spa";
  - (iii) as an "exercise gym";
  - (iv) as a "health studio";
  - (v) as a "health club";
  - (vi) as a "personal training facility"; or
  - (vii) with any other similar terms.
- (c) "Health spa" does not include:
  - (i) any facility operated by a licensed physician at which the physician engages in the practice of medicine;
  - (ii) any facility operated by a hospital, intermediate care facility, or skilled nursing care facility;
  - (iii) any public or private school, college, or university;
  - (iv) any facility owned or operated by the state or its political subdivisions;
  - (v) any facility owned or operated by the United States or its political subdivisions; or
  - (vi) instruction offered by an individual if:
    - (A) the individual offering the instruction does not utilize another individual as an employee or independent contractor; and
    - (B) a patron is not granted the use of a facility containing exercise equipment.
- (4) "Health spa services" means any service provided by a health spa, including athletic facilities, equipment, and instruction.

Amended by Chapter 47, 2006 General Session

**13-23-3. Contracts for health spa services.**

- (1) Any contract for the sale of health spa services shall be in writing. The

written contract shall constitute the entire agreement between the consumer and the health spa.

(2) The health spa shall provide the consumer with a fully completed copy of the contract required by Subsection (1) at the time of its execution. The copy shall show:

- (a) the date of the transaction;
- (b) the name and address of the health spa; and
- (c) the name, address, and telephone number of the consumer.

(3) (a) A contract may not have a term in excess of 36 months, but the contract may provide that the consumer may exercise an option to renew the term after its expiration.

(b) Except for a lifetime membership sold prior to May 1, 1995, a health spa may not offer a lifetime membership.

(4) The contract or an attachment to it shall clearly state any rules of the health spa that apply to:

- (a) the consumer's use of its facilities and services; and
  - (b) cancellation and refund policies of the health spa.
- (5) The contract shall specify which equipment or facility of the health spa:
- (a) is omitted from the contract's coverage; or
  - (b) may be changed at the health spa's discretion.

(6) The contract shall clearly state that the consumer has a three-day period after the day on which the contract is executed to rescind the contract.

Amended by Chapter 18, 2005 General Session

#### **13-23-4. Rescission.**

(1) A consumer may rescind a contract for the purchase of health spa services if he enters into the contract and gives value at a time when the health spa is not fully operational and available for use, and if the health spa does not become fully operational and available for use within 60 days after the date of the contract.

(2) A consumer's right to rescind his contract under this section continues for three business days after the health spa becomes fully operational and available for use.

(3) A consumer who rescinds his contract under this section is entitled to a refund of any payments he has made, less the reasonable value of any health spa services he actually received or \$25, whichever is less. The preparation and processing of the contract and other documents are not considered to be health spa services that are deductible under this subsection from any refundable amount.

(4) Any rescission of a contract under this section is effective upon the health spa's receipt of written notice of the consumer's intent to rescind the contract. The notice may be delivered by hand or mailed by certified mail postmarked no later than midnight of the third day after the health spa becomes fully operational and available for use.

Enacted by Chapter 105, 1987 General Session

#### **13-23-5. Registration -- Bond, letter of credit, or certificate of deposit**

**required -- Penalties.**

(1) (a) (i) It is unlawful for any health spa facility to operate in this state unless the facility is registered with the division.

(ii) Registration is effective for one year. If the health spa facility renews its registration, the registration shall be renewed at least 30 days prior to its expiration.

(iii) The division shall provide by rule for the form, content, application process, and renewal process of the registration.

(b) Each health spa registering in this state shall designate a registered agent for receiving service of process. The registered agent shall be reasonably available from 8 a.m. until 5 p.m. during normal working days.

(c) The division shall charge and collect a fee for registration under guidelines provided in Section 63J-1-504.

(d) If an applicant fails to file a registration application or renewal by the due date, or files an incomplete registration application or renewal, the applicant shall pay a fee of \$25 for each month or part of a month after the date on which the registration application or renewal were due to be filed, in addition to the registration fee described in Subsection (1)(c).

(e) A health spa registering or renewing a registration shall provide the division a copy of the liability insurance policy that:

(i) covers the health spa; and

(ii) is in effect at the time of the registration or renewal.

(2) (a) Each health spa shall obtain and maintain:

(i) a performance bond issued by a surety authorized to transact surety business in this state;

(ii) an irrevocable letter of credit issued by a financial institution authorized to do business in this state; or

(iii) a certificate of deposit.

(b) The bond, letter of credit, or certificate of deposit shall be payable to the division for the benefit of any consumer who incurs damages as the result of:

(i) the health spa's violation of this chapter; or

(ii) the health spa's going out of business or relocating and failing to offer an alternate location within five miles.

(c) (i) The division may recover from the bond, letter of credit, or certificate of deposit the costs of collecting and distributing funds under this section, up to 10% of the face value of the bond, letter of credit, or certificate of deposit but only if the consumers have fully recovered their damages first.

(ii) The total liability of the issuer of the bond, letter of credit, or certificate of deposit may not exceed the amount of the bond, letter of credit, or certificate of deposit.

(iii) The health spa shall maintain a bond, letter of credit, or certificate of deposit in force for one year after it notifies the division in writing that it has ceased all activities regulated by this chapter.

(d) A health spa providing services at more than one location shall comply with the requirements of Subsection (2)(a) for each separate location.

(e) The division may impose a fine against a health spa that fails to comply with the requirements of Subsection (2)(a) of up to \$100 per day that the health spa remains out of compliance. All penalties received shall be deposited into the Consumer

Protection Education and Training Fund created in Section 13-2-8.

(3) (a) The minimum principal amount of the bond, letter of credit, or certificate of credit required under Subsection (2) shall be based on the number of unexpired contracts for health spa services to which the health spa is a party, in accordance with the following schedule:

Principal Amount of Bond, Letter of Credit, or Certificate of Deposit	Number of Contracts
\$15,000	500 or fewer
35,000	501 to 1,500
50,000	1,501 to 3,000
75,000	3,001 or more

(b) A health spa that is not exempt under Section 13-23-6 shall comply with Subsection (3)(a) with respect to all of the health spa's unexpired contracts for health spa services, regardless of whether a portion of those contracts satisfies the criteria in Section 13-23-6.

(4) Each health spa shall obtain the bond, letter of credit, or certificate of deposit and furnish a certified copy of the bond, letter of credit, or certificate of deposit to the division prior to selling, offering or attempting to sell, soliciting the sale of, or becoming a party to any contract to provide health spa services. A health spa is considered to be in compliance with this section only if the proof provided to the division shows that the bond, letter of credit, or certificate of credit is current.

(5) Each health spa shall:

(a) maintain accurate records of the bond, letter of credit, or certificate of credit and of any payments made, due, or to become due to the issuer; and

(b) open the records to inspection by the division at any time during normal business hours.

(6) If a health spa changes ownership, ceases operation, discontinues facilities, or relocates and fails to offer an alternate location within five miles within 30 days after its closing, the health spa is subject to the requirements of this section as if it were a new health spa coming into being at the time the health spa changed ownership. The former owner may not release, cancel, or terminate the owner's liability under any bond, letter of credit, or certificate of deposit previously filed with the division, unless:

(a) the new owner has filed a new bond, letter of credit, or certificate of deposit for the benefit of consumers covered under the previous owner's bond, letter of credit, or certificate of deposit; or

(b) the former owner has refunded all unearned payments to consumers.

(7) If a health spa ceases operation or relocates and fails to offer an alternative location within five miles, the health spa shall provide the division with 45 days prior notice.

Amended by Chapter 189, 2014 General Session

**13-23-6. Exemptions from bond, letter of credit, or certificate of deposit requirement.**

A health spa that offers no paid-in-full membership, but only memberships paid for by installment contracts is exempt from the application of Subsections 13-23-5(2) through (5) if:

- (1) each contract contains the following clause: "If this health spa ceases operation and fails to offer an alternate location within five miles, no further payments under this contract shall be due to anyone, including any purchaser of any note associated with or contained in this contract.";
- (2) all payments due under each contract, including down payments, enrollment fees, membership fees, or any other payments to the health spa, are in equal monthly installments spread over the entire term of the contract; and
- (3) the term of each contract is clearly stated and is not capable of being extended.

Amended by Chapter 47, 2006 General Session

**13-23-7. Enforcement -- Costs and attorney's fees -- Penalties.**

(1) The division may, on behalf of any consumer or on its own behalf, file an action for injunctive relief, damages, or both to enforce this chapter. In addition to any relief granted, the division is entitled to an award for reasonable attorney's fees, court costs, and reasonable investigative expenses.

(2) (a) A person who willfully violates any provision of this chapter, either by failing to comply with any requirement or by doing any act prohibited in this chapter, is guilty of a class B misdemeanor. Each day the violation is committed or permitted to continue constitutes a separate punishable offense.

(b) In the case of a second offense, the person is guilty of a class A misdemeanor.

(c) In the case of three or more offenses, the person is guilty of a third degree felony.

(3) (a) In addition to any other penalty available under this chapter, a person who violates this chapter is subject to:

- (i) a cease and desist order; and
- (ii) an administrative fine of up to \$2,500 for each separate violation that is not a violation described in Subsection 13-23-5(2)(e) up to \$10,000 for any series of violations arising out of the same operative facts.

(b) All administrative fines collected under this chapter shall be deposited in the Consumer Protection Education and Training Fund created in Section 13-2-8.

Amended by Chapter 18, 2005 General Session